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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:

) Docket No. **CAA-5- 2000-0 161**
)
)
) **Proceeding to Assess a**
) **Civil Penalty under**
) **Section 113(d) of the**
) **Clean Air Act,**
) **42 U.S.C. § 7413(d)**
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)
)
)

Indiana Municipal Power
Agency, Carmel, Indiana
at its
Anderson Combustion Turbine
Facility, Anderson, Indiana
and
Richmond Combustion Turbine
Facility, Richmond, Indiana,

Respondent.

Administrative Complaint

1. This is an administrative proceeding to assess a civil penalty under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d).

2. The Complainant is, by lawful delegation, the Director of the Air and Radiation Division, United States Environmental Protection Agency (U.S. EPA), Region 5, Chicago, Illinois.

3. The Respondent is the Indiana Municipal Power Agency (IMPA), a corporation doing business in Indiana. This complaint addresses violations at IMPA's Anderson Combustion Turbine Facility located in Anderson, Indiana and Richmond Combustion Turbine Facility located in Richmond, Indiana.

Statutory and Regulatory Background

4. Pursuant to Title IV of the Act, 42 U.S.C. § 7401, et seq., as amended by Public Law 101-549 (November 15, 1990), the Administrator of the U.S. EPA established certain general provisions and operating permit program requirements for affected

sources and affected units under the Acid Rain Program at 40 C.F.R. Part 72.

5. Pursuant to Section 412 and 821 of the Act, 42 U.S.C. §§ 7401-7671q, as amended by Public Law 101-549 (November 15, 1990) the Administrator established requirements for the monitoring, record keeping, and reporting of sulfur dioxide, nitrogen oxide, and carbon dioxide emissions, volumetric flow, and opacity under the Acid Rain Program at 40 C.F.R. Part 75.

6. "Affected source" means a source that includes one or more affected units. 42 U.S.C. § 7651a(1), 40 C.F.R. § 72.2.

7. "Affected unit" means a unit that is subject to emission reduction requirements or limitation under Title IV of the Act and under 40 C.F.R. 72.6. 42 U.S.C. § 7651a(2), 40 C.F.R. § 72.2.

8. "Phase II" means the Acid Rain Program beginning January 1, 2000, and continuing into the future thereafter. 40 C.F.R. § 72.2.

9. "Phase II Unit" means any affected unit that is subject to an Acid Rain emissions reduction requirement or Acid Rain emission limitation during Phase II only. 40 C.F.R. § 72.2.

10. 40 C.F.R. § 72.6(a)(3)(i) defines "new units" as affected units. Any source that includes such an unit shall be an affected source subject to the Acid Rain Program.

11. 40 C.F.R. § 72.30(a) requires any source with an affected unit to submit a complete Acid Rain permit application by the applicable deadline in 40 C.F.R. § 72.30(b), and the owners and operators of such source and any affected unit at the source

shall not operate the source or unit without a permit that states its Acid Rain Program requirements.

12. 40 C.F.R. § 72.30(b)(2)(ii) requires the designated representative to submit a complete permit application governing such unit to the permitting authority at least 24 months before the later of January 1, 2000 or the date on which the unit commenced operation.

13. 40 C.F.R. § 75.2(a) requires the provisions of 40 C.F.R. Part 75 apply to each affected unit subject to the Acid Rain emission limitations or reduction requirements for SO₂ or NO_x.

14. 40 C.F.R. § 75.4(a) requires that owners or operators of each existing affected unit ensure that all monitoring systems required by 40 C.F.R. Part 75 for monitoring SO₂, NO_x, CO₂, opacity, and volumetric flow be installed and all certification tests be completed by January 1, 1995 and January 1, 1996 as set forth in 40 C.F.R. § 75.4(a)(4).

15. 40 C.F.R. § 75.10 requires the owner or operator of an affected unit to measure opacity, and all SO₂, NO_x, and CO₂ emissions for each affected unit as set forth in the Section.

16. 40 C.F.R. § 75.62 requires the designated representative for an affected unit to submit a monitoring plan to the Administrator no later than 45 days prior to the first scheduled certification test, as set forth in 40 C.F.R. § 75.4(a)(4).

17. 40 C.F.R. § 75.64 requires the designated representative for an affected unit to submit electronic

quarterly reports to the Administrator, beginning with the data from the later of: the last calendar quarter of 1993 or the calendar quarter corresponding to the relevant deadline for certification in 40 C.F.R. § 75.4(a), (b) or (c).

18. The Administrator may assess a civil penalty of up to \$25,000 per day of violation up to a total of \$200,000 for Acid Rain Program violations that occurred prior to January 31, 1997, under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1). The Debt Collections Improvements Act of 1996 increased the statutory maximum penalty to \$27,500 per day of violation up to a total of \$220,000 for Acid Rain Program violations that occurred on or after January 31, 1997. 31 U.S.C. § 3701 and 40 C.F.R. Part 19.

19. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

20. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this complaint.

General Allegations

21. IMPA operates four combustion turbines; two are located at its Anderson facility located at 6035 Park Road, Anderson,

Indiana and two at its Richmond facility located at 4752 Gates Road, Richmond, Indiana.

22. All four units are peaking units that began commercial operations in 1992.

23. All four units have a rated capacity of approximately 38.7 megawatts per unit, and are primarily fueled by natural gas with No. 2 fuel oil as a backup.

24. All four units are affected units as defined by 42 U.S.C. § 7651a(2) and 40 C.F.R. § 72.2 and as set forth at 40 C.F.R. § 72.6(a)(3)(i).

25. The Anderson and Richmond facilities are affected sources as defined by 42 U.S.C. § 7651a(2) and 40 C.F.R. § 72.2 and are subject to the Acid Rain Program. 42 C.F.R. § 72.6(a)(3)(i).

26. As affected sources, the Anderson and Richmond facilities are subject to 40 C.F.R. Part 75.

27. IMPA is a "person" as defined at 42 U.S.C. § 7602.

Count I

28. Complainant incorporates paragraphs 1 through 27 of this complaint, as if set forth in this paragraph.

29. 40 C.F.R. § 72.30 requires IMPA to submit a complete Acid Rain permit application to its permitting authority at least 24 months before January 1, 2000 for its Anderson and Richmond facilities.

30. From January 1, 1998 to April, 2000, IMPA failed to submit a complete Acid Rain permit application as required by 40 C.F.R. § 72.30.

31. IMPA's failure to submit a complete Acid Rain permit application by January 1, 1998 constitutes a violation of 40 C.F.R. § 72.30.

32. IMPA's violation of 40 C.F.R. § 72.30 subjects IMPA to the issuance of an Administrative Order assessing a civil administrative penalty pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d).

Count II

33. Complainant incorporates paragraphs 1 through 32 of this Complaint, as if set forth in this paragraph.

34. 40 C.F.R. § 75.10 requires that IMPA measure all SO₂, NO_x, and CO₂ emissions for each affected unit as detailed in 40 C.F.R. § 75.10(a).

35. Until July 2000, IMPA failed to comply with the monitoring provisions set forth at 40 C.F.R. § 75.10.

36. IMPA's failure to comply with such monitoring provisions constitutes a violation of 40 C.F.R. § 75.10.

37. IMPA's violation of 40 C.F.R. § 75.10 subjects IMPA to the issuance of an Administrative Order assessing a civil administrative penalty pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d).

COUNT III

38. Complainant incorporates paragraphs 1 through 37 of this Complaint, as if set forth in this paragraph.

39. 40 C.F.R. § 75.10 requires that IMPA submit a monitoring plan to the Administrator no later than 45 days prior to January 1, 1996 for NO_x and no later than 45 days prior to

January 1, 1995 for SO₂.

40. Until July 2000, IMPA failed to submit the required monitoring plans for NO_x and SO₂ as required by 40 C.F.R. § 75.62.

41. IMPA's failure to submit such monitoring plans constitutes a violation of 40 C.F.R. § 75.62.

42. IMPA's violation of 40 C.F.R. § 75.62 subjects IMPA to the issuance of an Administrative Order assessing a civil administrative penalty pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d).

COUNT IV

43. Complainant incorporates paragraphs 1 through 42 of this Complaint, as if set forth in this paragraph.

44. 40 C.F.R. § 75.64 requires that IMPA submit quarterly reports to the Administrator by January 1, 1995.

45. Until August 2000, IMPA failed to submit the quarterly reports as required by 40 C.F.R. § 75.64.

46. IMPA's failure to submit such quarterly reports constitutes a violation of 40 C.F.R. § 75.64.

47. IMPA's violation of 40 C.F.R. § 75.64 subjects IMPA to the issuance of an Administrative Order assessing a civil administrative penalty pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d).

Proposed Civil Penalty

48. The Administrator must consider the factors specified in Section 113(e) of the Act when assessing an administrative penalty under Section 113(d). 42 U.S.C. § 7413(e).